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11 Attorneys for USACM Liquidating Trust

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In re:

15 USA COMMERCIAL MORTGAGE
16 COMPANY,

17 USA CAPITAL REALTY ADVISORS,
18 LLC,¹

19 USA CAPITAL DIVERSIFIED TRUST
20 DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³ Debtors.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR¹
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR²
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTIONS OF
USACM TRUST TO PROOFS OF
CLAIM BASED UPON
INVESTMENT IN THE
HUNTSVILLE LOAN AKA THE
WEST HILLS PARK LOAN**

Date of Hearing: September 23, 2010

Time of Hearing: 10:30 a.m.

Estimated Time for Hearing: 10 minutes

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 3. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”), which
2 is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of
3 Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA
4 Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States
5 Bankruptcy Court for the District of Nevada.

6 4. In about March 2004, USACM circulated an Offer Sheet to prospective
7 Direct Lenders soliciting funding for an acquisition and development loan to a borrower
8 identified as “West Hills Park Joint Venture.” A copy of the Offer Sheet is attached hereto
9 as **Exhibit B** and incorporated by this reference. The total loan amount proposed was up
10 to \$13,000,000.00. The loan would be used by Borrower for a commercial development
11 on property located in Huntsville, Texas. The Offer Sheet described the investment as a
12 “First Trust Deed” and noted that the investment would be secured by a first deed of trust
13 on approximately 38 acres of land and a subordinated deed of trust on three other parcels
14 totaling 50 acres. The Offer Sheet indicated that the loans would be repaid through the
15 sale of retail pads to end users and indicated that the loan to value would be approximately
16 62% on the combined parcel appraisals done by Commercial Realty Advisors, Inc. dated
17 September 19, 2003. The Trust was unable to locate a copy of this appraisal, but has
18 assumed it will support this figure.

19 5. On March 13, 2004, Borrower made and delivered to various lenders,
20 including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed
21 of Trust” (the “Note”) and a related “Construction Loan Agreement” (“Loan Agreement”)
22 The Note and Loan Agreement provided for a loan in the initial principal amount of
23 \$9,000,000, but allowed USACM to increase the loan amount up to \$12,500,000. The
24 loan was intended to fund the acquisition of a portion of the subject property and
25 construction of the contemplated commercial development.

26

1 6. On July 17, 2004, Borrower executed a first amendment to the deed of trust
2 and a first amendment to loan documents that provided for the funding of an additional
3 \$250,000; On December 8, 2004, Borrower executed a second amendment to the deed of
4 trust and a first amendment to loan documents that provided for the funding of an
5 additional \$750,000; On February 28, 2004, Borrower executed a third amendment to the
6 deed of trust and a first amendment to loan documents that provided for the funding of an
7 additional \$475,000, bringing the total principal amount of the loan to \$10,475,000.

8 7. The Note was secured by a Deed of Trust, Assignment of Rents, Security
9 Agreement and Fixture Filing (“Deed of Trust”) on real property and improvements
10 thereon, as described in the Deed of Trust. The Deed of Trust was recorded in the Official
11 Records of the Walker County, Texas on April 7, 2004.

12 8. The loan came due on April 7, 2005 with the principal amount outstanding
13 of \$10,475,000 and interest due in the amount of \$507,118.05 through April 30, 2005.
14 The parties entered into a loan extension agreement that extended the due date of the loan
15 for one year to April 7, 2006. Tom Curtis of Curtis Development guaranteed the loan.

16 9. According to the USACM “Loan Summary” filed in this case, Borrower was
17 not performing on the Note as of July 31, 2006. A review of the public records of Walker
18 County, Texas indicates that the parcels located in Walker County that secured the loan are
19 no longer owned by West Hills Park Joint Venture and at least some of the parcels that
20 secured the loan are owned by an affiliate of ARC.

21 10. During this bankruptcy case, USACM treated the Direct Lenders with
22 respect to any interim payments by the borrower in accordance with this Court’s orders
23 and the confirmed Plan. Beyond what it was able to determine from the Walker County
24 public records, the USACM Trust does not know the ultimate disposition of the Huntsville
25 Loan, the collateral securing that loan or whether the Direct Lenders were repaid in whole
26 or in part.

1 I declare under penalty of perjury that the foregoing is true and correct.
2

3
4 Dated: August 17, 2010
5

6 /s/Geoffrey L. Berman
7 Geoffrey L. Berman
8

9 Copy of the foregoing (without exhibits)
10 mailed by first class
11 postage prepaid U.S. Mail on
12 August 17, 2010 to the
13 investors in the Huntsville Loan listed
14 on Exhibit A.
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16 s/ Marilyn Schoenike
17 Marilyn Schoenike
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